

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14169, of 1735 Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations for a variance from the use provisions (Section 3105) to use the second and third floors of the subject premises as law offices in an R-5-B District at premises 1735 - 20th Street, N.W., (Square 110, Lot 23).

HEARING DATES: September 12 and November 28, 1984  
DECISION DATES: January 9 and February 6, 1985

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of September 12, 1984. On August 29, 1984, counsel for the applicant filed a motion requesting a continuance on the grounds that the firm had only recently been retained and since the relief requested, a use variance, involved an extremely difficult burden to meet, counsel had insufficient time to prepare. The Residential Action Coalition opposed the motion. The Chairperson, for cause shown, granted the continuance to the public hearing of November 28, 1984.

2. In BZA Order No. 13264, dated August 25, 1980, the Board granted the use of the basement and first floor of the subject premises as offices for a law firm. The Board denied the request to extend the low office use to the second and third floors. The Board incorporated the record of BZA Application No. 13264 as part of the subject record.

3. In the subject application, in addition to the first floor, the applicant seeks to use the second and third floors as low offices. The applicant proposes to convert the basement to residential use. At present the second and third floors are vacant.

4. The subject property is located on the east side of 20th Street between R and S Streets, N.W. and is known as premises 1735 20th Street, N.W. It is in an R-5-B District.

5. The subject site is twenty feet wide and ninety feet deep. It is improved with a three story brownstone row dwelling with an English basement. The site is rectangular in shape. There is a ten foot wide public alley to the rear of the site. Three parking spaces are available in the rear

yard only two of which are of the prescribed nine feet by nineteen feet dimensions.

6. To the north adjacent to the site, on the southeast corner of 20th and S Streets, there is a seven story apartment building known as the Chateau Thierry. To the east, there is an intersection of two ten foot wide public alleys followed by the rear of several apartment houses and Frasers Stables in the R-5-B District. To the south is the four story Nelson apartment house, followed by Carver's television repair shop, in the R-5-B District. To the west is 20th Street, a one way street northbound with a ninety foot wide right-of-way, followed by the rear of People Pickle Deli, Earthworks Headshop with an upstairs apartment, row dwellings, a beauty salon and an apartment house in the C-3-C District.

7. On the same side of 20th Street as the subject property, there are approximately five apartment houses and four townhouses. In the four townhouses, there are commercial uses with a residential use above. On the southern end of the street is a large restaurant with parking spaces. Directly across the street from the subject site are the rear entrances of commercial properties fronting on Connecticut Avenue.

8. The subject structure was built in 1885, and is located within the boundaries of the Dupont Circle Historic District.

9. The structure contains a total gross floor area of approximately 4,697 square feet, with a net usable area of approximately 3,945 square feet. The basement and first floor each contain approximately 1,181 net usable square feet. The second floor contains approximately 897 net usable square feet. The third floor contains approximately 685 net usable square feet, excluding stairwells and corridors.

10. The building has one main entrance on the first floor near the south property line. The second and third floors are accessed through an open stairway abutting the north wall. Access to the upper floors may only occur by traversing useable first floor space central to the law office use. The basement level is served by private and independent front and rear means of egress.

11. The applicant undertook a substantial renovation when it purchased the property in 1981, in order to comply with Building Code requirements since the use was being changed from an audio tape duplicating service to a law office. The renovation work was carried out in conformance with the historic preservation standards of the Secretary of

the Interior. These standards apply to both the interior and the exterior of the building. The renovation of the grand stairway between the first and second floors was a part of that process.

12. The applicant has used the basement and first floor for law offices since 1981, pursuant to Board approval. The existing law office use is a general law practice representing local individuals and small business enterprises. The applicant estimates that approximately fifty percent of the firm's business comes from the Dupont Circle area. The hours of operation are from 9:00 A.M. to 5:30 P.M. Monday through Friday. The maximum number of personnel is estimated at eleven.

13. Based on the law firm's practice at this location over the past three years, the firm determined that a more functional and efficient layout was required to permit usage of the entire structure and not just the basement and first floors. The applicant proposes to achieve this goal by abandoning the nonconforming office use in the basement, and converting the basement from office use into residential use. The first, second and third floors of the structure would then be used for law offices. The overall net increase in useable office floor area is approximately 400 square feet. Approval of the application will also add an additional residential unit to the housing stock of the neighborhood.

14. The architect testified that to construct a separate lobby area on the first floor for the upper floors would be very costly, would significantly decrease the useable floor area on the first floor, would destroy the carefully restored staircase, and could potentially cause decertification of the site's historic status thereby subjecting the applicant to tax penalties by the Internal Revenue Service. The Board so finds.

15. The applicant's expert real estate appraisal witness testified that, after considering all permitted uses, there is no other permitted use of the upper two floors of the property which could be considered reasonable under the circumstances. He also testified that the approximately 400 square feet of floor area that would be gained for office use in the building by the proposed realignment of uses will be of less value in real estate valuation terms than they would be if located in a typical office building because they would be located in the upper floors of a building without elevator service. Similarly, the new residential unit in the basement, although 400 square feet smaller than the upper two floors combined, will be more valuable because it will have two independent direct means of ingress and egress, whereas there is no independent

means of egress for the upper floors, if put to a residential use. The Board so finds.

16. In conjunction with this application, the applicant proposes to abandon the matter-of-right basement law office use and convert it to a residence. The advantages of a ground floor residential component are many. First, it would have a private entry, front and back, at ground level. Second, it would allow the office and residential use to be naturally divided based upon the current floor plan. Third, it would not require extensive and detrimental renovation of the existing townhouse. Fourth, the upper three floors function most reasonably as a unit while the basement floor will function more efficiently as a distinct use. The alternative to the applicant's proposal is a situation in which the space in the upper two floors remains vacant since the introduction of a separate use to that of the first floor is not reasonable. Finally, the street perception would be of a single-family townhouse, since the office circulation will be internal and the residential unit will be of a typical English basement-type apartment. The proposed renovation would be an improvement over the current situation which prevents the applicant from utilizing the upper two floors.

17. The Board finds that undue hardship would result to the owner if the requested relief is not granted. Any residential use in the upper two floors of the building would require that user to travel through the middle of the law office in order to get access to the upper floors. This would be disruptive to the professional office operation, and presents both safety and security problems for the law office and to the user of the second and third floors because the access would be through secretarial and file areas, and could not be controlled. In addition, the necessary enclosure to comply with the Building Code would harm the historic integrity of the building. Safety and security problems would also result to the residential occupant in that the principal means of egress would be through the office area.

18. The Office of Planning (OP), by report dated November 21, 1984, recommended that the application be denied. The OP reported that it recognized the applicant's vested nonconforming use rights associated with the basement and first floor of the building. The applicant claims that these rights create a hardship by precluding use of the structure in the efficient and functional manner desired by the applicant. The OP was of the opinion that it was contrary to the intent of the Zoning Regulations to permit an existing nonconforming use to provide a hardship basis for the expansion of that same nonconforming use into other portions of the building, when the Zoning Regulations specifically prohibit extension of a nonconforming use.

19. The Office of Planning further reported that the building was not significantly different from many Victorian row structures in the Dupont Circle neighborhood, many of which are in R-5-B Districts and within the Dupont Circle Historic District. The OP observed nothing unique about this building which would preclude its use for a permitted R-5-B use.

20. The Office of Planning was further of the opinion that the arguments concerning historic preservation and its constraints upon the applicant's use of the property do not justify the granting of a use variance. As evidenced by the applications for both a certificate of occupancy and a building permit, the applicant was aware of the zoning constraints on the structure prior to initiation of the rehabilitation process. Thus, the applicant proceeded at risk with the certified rehabilitation and created the purposes. In the OP's opinion, the loss of rehabilitation tax credit did not justify the granting of a use variance, being inherently economic and self-imposed. Further, the applicant proposes to exchange the nonconforming use rights associated with the basement for nonconforming use rights on the second and third floor. The net effect of this proposal is to increase office space by one floor at the expense of residential use. This proposal also deletes existing space for residential units or other permitted uses on the upper two floors in exchange for one unit in the basement. For reasons discussed below, the Board does not concur in the reasoning and recommendation of the OP.

21. Advisory Neighborhood Commission 2B, by letter dated November 19, 1984, reported that the ANC recommended approval of the application. No grounds for the recommendation were recited in the letter.

22. There was opposition to the application at the public hearing and of record. The grounds for the opposition were those as found by the Office of Planning, Findings No. 18 through 20. In addition, the opposition was concerned that the proposed use would further exacerbate the parking situation. In the opinion of the opposition, the applicant exceeded the parking in the rear of the site and overflowed into the alley making passage of cars and trucks more difficult.

23. The Board finds that the granting of the application, as conditioned below, will address the concerns of the opposition as to traffic and trash.

24. The record was left open at the end of the public hearing for further submissions the Board requested. In response to the Board's inquiry whether a primary or exclusive entrance to the first floor could be created through the public alley at the rear in order to create a

residential unit at the rear of the first floor of the subject structure, the applicant responded that such a configuration would be inconsistent with certain D.C. laws and regulations. The Board concurs with the applicant's analysis of those laws and regulations.

25. In response to the Board's inquiry regarding the parking computations for the subject property, the applicant reported that the subject structure contains a gross floor area of 4,697 square feet. The basement and first floor together contain 2,490 square feet of gross floor area. The parking requirement for office use in the R-5-B District is one space for each 2,400 square feet of gross floor area, pursuant to Paragraph 7207.17 of the Zoning Regulations. The parking requirement for dwellings in the R-5-B District is one parking space for each two units. The existing uses generate a parking credit of two spaces.

26. The applicant proposes to use the upper three floors for office use. These three floors together contain 3,472 square feet of gross floor area. With a requirement of one parking space for each 2,400 square feet of gross floor area, this translates to a requirement of 1.44 parking spaces, or one parking space. The residential unit in the basement will result in a parking requirement of one parking space.

27. Because the parking credit equals the parking requirement, no parking spaces are legally required in conjunction with the proposed use.

28. In reference to the Board's inquiry of the assessed values of the property at the time of purchase and as of the present, the applicant submitted the assessments for the subject property for the tax years 1980-81, 1983-84 and 1984-85. The 1980-81 assessment was \$100,800 for the land and building, land \$30,600 and building \$70,200. The applicant purchased the property in 1981, and spent \$125,000 on necessary improvements to the building to bring the property up to code requirements. The 1983-84 assessment was \$219,000 (Land - \$30,600; Building - \$188,400), and the 1985 assessment was \$249,000 (Land - \$63,000; Building - \$186,000). Thus, while the applicant invested \$125,000 in renovations to the structure, the building has risen in value only \$115,800 over the course of applicant's ownership.

29. The applicant also submitted, as requested by the Board, photographs and plat depicting the location of the trash area and its relationship to the parking area in the rear of the site. The applicant further submitted, as requested, a building section plan prepared by its architect.

30. In response to the Boards request for a memorandum of law evidencing how the particular facts of the subject application meet the burden of proof for the granting of a use variance, counsel for the applicant responded that the Board of Zoning Adjustment is empowered to grant use variances based upon the three criteria set forth in Section 8207.11 of the Zoning Regulations and summarized by the D.C. Court of Appeals as follows:

- A. Unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property,
- B. Undue hardship, and
- C. No harm to the public or the zone plan.

The Court has also held that a use variance is proper when a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.

31. The Board finds that counsel's memorandum of law is responsive in sustaining the burden for a use variance. The Board also finds that the said memorandum addresses the issues raised in the report of the Office of Planning and by the opposition.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a use variance, which requires the showing of an exceptional situation or condition of the property, undue hardship to the owner from the strict application of the regulations, and no adverse affect upon the community or upon the zone plan. Based upon the findings of fact set forth above, the Board concludes that the subject property is affected by several exceptional situations or conditions. There is the existing building on the lot, including its structural and physical configuration, and its certified historic status, which limits the degree to which interior and exterior modifications can be made to the building. There is also the existing nonconforming law office use of the lower two floors of the building, with the upper two floors presently permitted to be devoted only to permitted R-5-B uses. The Board concludes that the proposed configuration will now put the entire structure to a reasonable use of property. The Board concludes that the applicant has met its burden of proof in establishing grounds for a use variance. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The use of the basement of the subject premises shall be limited to one residential apartment unit.
2. The use of the first, second and third floors of the subject premises shall be limited to law offices having a maximum of eleven employees.
3. The use of the attic space of the subject premises shall be limited to the housing of mechanical equipment. Access to the attic shall be limited to the existing pull-down stair system.
4. Construction shall be in accordance with the plans marked as Exhibit No. 30A of the record.
5. The parking area to the rear of the subject premises shall be paved and striped. Any illumination of the parking area shall be so arranged that all direct rays are confined to the surface of the parking area.
6. The trash area shall be screened by a solid wall or fence of wood, brick or masonry material, and shall be located as shown on the diagram marked as Exhibit No. 39G of the record.

VOTE: 5-0 (Charles R. Norris, William F. McIntosh and Douglas J. Patton to grant; Lindsley Williams and Carrie L. Thornhill to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

23 APR 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."



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THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14169order/LJPD